THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

Writ Petition No.13455 of 2003

Dated 11.07.2007

Between:

Y.Venkateswarlu S/o Venkata Lalaiah and others.

.. **Petitioners**

And:

The Superintendent of Police, Khammam and others.

.. **Respondents**

THE HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

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ORDER:

Petitioners are the owners of land admeasuring Acs.2.09 cents in Sy.No.372 situated at Tanikella village of Konijerla Mandal in Khammam District. Originally, their father, by name Yasa Venkata Lalaiah, purchased the said land from Ch.Rangachary. Later, he gifted the said land in favour of the first respondent for construction of police station at Tanikella, under a Registered Gift Deed bearing No.1112/1984. Subsequently, police station at Tanikella was shifted to Konijerla. Therefore, as the purpose for which the gift was made was changed, petitioners requested the first respondent to return the land to them, and considering their request, the first respondent, by proceedings dated 13.02.2002, expressed no-objection to cancel the Gift Deed. Pursuant thereto, petitioners executed Gift Settlement Cancellation Deed dated 18.02.2002, cancelling the gift. Now petitioners complain that respondents 3 and 4 are interfering with their possession and enjoyment of the land in question, and harassing them. Hence, this writ petition.

A counter-affidavit is filed on behalf of respondents 1 to 3 stating that an enquiry with regard to cancellation of the Gift Deed based on the no-objection certificate alleged to have been given by the first respondent is pending as no such proceedings regarding the no-objection certificate are traceable in the offices of respondents 1 to 3.

In that view of the matter, as the land in question has been in possession of the Police Department since the date of gift and the petitioners tried to interfere with the possession of the department, they were summoned to the police station for the purpose of enquiry and were advised not to take law into their hands and not to occupy the land until the enquiry is completed. As such, there was no harassment by the respondents at any point of time.

Heard the learned counsel for the petitioners, learned Assistant Government Pleader for Home and the respondents appearing for respondents 5 to 24.

Evidently, petitioners' father gifted the land in question with an intention to see that a police station is constructed at Tanikella. In fact, the Gift Deed also specifies that the gift is made for the purpose of constructing police station. When the said condition is deviated and police station is constructed elsewhere, in my considered view, the said gift need not be acted upon. It cannot be said that the public purpose may change, but when once the title vests with the Government, it is always for the Government to use the land for any public purpose. It is a conditional gift and shall come into effect only when the condition specified therein is complied with. It is always open for the donor to revoke the gift if the condition specified in the gift deed is not complied with. In fact, in this context, the Supreme Court in Thakur Raghunath Ji Maharaj v. Ramesh Chandra[1] observed as under:

> "As to the execution and validity of the agreement, the first appellate Court recorded a categorical finding based on the pleadings and evidence that it was a genuine document. The finding of fact recorded by the first appellate Court was not interfered with by the High Court in the second appeal and rightly so. The gift deed and agreement were executed on the same day. Having regard to the evidence, the High Court and

> the first appellate Court were right in taking the view that both formed the part of one transaction. It is not disputed that the gift deed did not contain any conditions in regard to the building of college on the suit plot but in the agreement it is clearly stated that in the suit land, there are built up chabutaras of 'samadhis' of the father and mother of the plaintiff, shall be maintained in the same condition; the suit land shall be used for the construction of a degree college and not for any other purpose; if the college is not built within six months, the gift deed will be deemed to have come to an end and that the plaintiff shall be considered to be the owner of the land; the possession will be of the plaintiff till the degree college is not built; in case the college building is not constructed within the said period, the plaintiff will be entitled to take appropriate action in the Court of law and in the event the degree college is constructed, the plaintiff will have no right over the land. From these terms contained in the said deed of agreement, it is clear that the gift was not absolute and/or unconditional. The gift deed and the agreement forming one transaction are to be read together and given effect to accordingly. In other words, the defendants had to take both the benefit and burden. They could not reap the benefit and avoid to unload the burden. Since the defendants did not construct a college building on the suit land, the gift did not come into effect."

Further, pursuant to the no-objection given by the first respondent, cancellation deed was also executed. In those circumstances, interference by respondents 3 and 4 can definitely be said to be without any authority or power.

Accordingly, the writ petition is allowed and the respondents are hereby directed not to interfere with the peaceful possession and enjoyment of the petitioner in respect of the land in question. There shall be no order as to costs.

11.07.2007

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[1] AIR 2001 SC 2340